

AMENDED IN ASSEMBLY APRIL 18, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2696

Introduced by Assembly Member Huff
(Coauthor: Assembly Member Benoit)
(Coauthor: Senator Margett)

February 24, 2006

An act to amend Section 831.7 of the Government Code, and to amend Section 115800 of the Health and Safety Code, relating to recreational safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 2696, as amended, Huff. Recreational safety: skateboard parks: scooters.

(1) Existing law provides that neither public entities nor public employees are liable to any person who participates in a hazardous recreational activity. Existing law defines “hazardous recreational activities” for these purposes to include various activities.

This bill would provide that the use of a nonmotorized scooter or an electric scooter is a hazardous recreational activity for the purposes of those provisions.

(2) Existing law, in effect until January 1, 2008, provides that skateboarding at a public skateboard park that is constructed after January 1, 1998, is a hazardous recreational activity if the person skateboarding is 14 years of age or older, the skateboarding activity is stunt, trick, or luge skateboarding, and the skateboard park is on public property, as specified. That law, also in effect until January 1, 2008, requires local public agencies to maintain a record of all known or reported injuries incurred by skateboarders in a public skateboard

park or facility, and other information regarding these incidents, as specified, and requires that copies of those records be filed annually with the Judicial Council which is required to submit a report to the Legislature by March 31, 2007, on these incidents, including claims arising therefrom.

This bill would revise the age element of the provision so that skateboarding as described above would be deemed a hazardous activity if the person skateboarding is 10 years of age or older. By expanding the scope of persons whose injuries from skateboarding are subject to recordkeeping by local public agencies, the bill would create a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 831.7 of the Government Code is
2 amended to read:
3 831.7. (a) Neither a public entity nor a public employee is
4 liable to any person who participates in a hazardous recreational
5 activity, including any person who assists the participant, or to
6 any spectator who knew or reasonably should have known that
7 the hazardous recreational activity created a substantial risk of
8 injury to himself or herself and was voluntarily in the place of
9 risk, or having the ability to do so failed to leave, for any damage
10 or injury to property or persons arising out of that hazardous
11 recreational activity.
12 (b) As used in this section, "hazardous recreational activity"
13 means a recreational activity conducted on property of a public
14 entity which creates a substantial (as distinguished from a minor,
15 trivial, or insignificant) risk of injury to a participant or a
16 spectator.

1 “Hazardous recreational activity” also means:

2 (1) Water contact activities, except diving, in places where or
3 at a time when lifeguards are not provided and reasonable
4 warning thereof has been given or the injured party should
5 reasonably have known that there was no lifeguard provided at
6 the time.

7 (2) Any form of diving into water from other than a diving
8 board or diving platform, or at any place or from any structure
9 where diving is prohibited and reasonable warning thereof has
10 been given.

11 (3) Animal riding, including equestrian competition, archery,
12 use of a nonmotorized scooter or an electric scooter, bicycle
13 racing or jumping, mountain bicycling, boating, cross-country
14 and downhill skiing, hang gliding, kayaking, motorized vehicle
15 racing, off-road motorcycling or four-wheel driving of any kind,
16 orienteering, pistol and rifle shooting, rock climbing,
17 rocketeering, rodeo, spelunking, sky diving, sport parachuting,
18 paragliding, body contact sports (i.e., sports in which it is
19 reasonably foreseeable that there will be rough bodily contact
20 with one or more participants), surfing, trampolining, tree
21 climbing, tree rope swinging, waterskiing, white water rafting,
22 and windsurfing. For the purposes of this subdivision, “mountain
23 bicycling” does not include riding a bicycle on paved pathways,
24 roadways, or sidewalks.

25 (c) Notwithstanding the provisions of subdivision (a), this
26 section does not limit liability which would otherwise exist for
27 any of the following:

28 (1) Failure of the public entity or employee to guard or warn
29 of a known dangerous condition or of another hazardous
30 recreational activity known to the public entity or employee that
31 is not reasonably assumed by the participant as inherently a part
32 of the hazardous recreational activity out of which the damage or
33 injury arose.

34 (2) Damage or injury suffered in any case where permission to
35 participate in the hazardous recreational activity was granted for
36 a specific fee. For the purpose of this paragraph, a “specific fee”
37 does not include a fee or consideration charged for a general
38 purpose such as a general park admission charge, a vehicle entry
39 or parking fee, or an administrative or group use application or
40 permit fee, as distinguished from a specific fee charged for

1 participation in the specific hazardous recreational activity out of
2 which the damage or injury arose.

3 (3) Injury suffered to the extent proximately caused by the
4 negligent failure of the public entity or public employee to
5 properly construct or maintain in good repair any structure,
6 recreational equipment or machinery, or substantial work of
7 improvement utilized in the hazardous recreational activity out of
8 which the damage or injury arose.

9 (4) Damage or injury suffered in any case where the public
10 entity or employee recklessly or with gross negligence promoted
11 the participation in or observance of a hazardous recreational
12 activity. For purposes of this paragraph, promotional literature or
13 a public announcement or advertisement—~~which~~ *that* merely
14 describes the available facilities and services on the property
15 does not in itself constitute a reckless or grossly negligent
16 promotion.

17 (5) An act of gross negligence by a public entity or a public
18 employee which is the proximate cause of the injury.

19 Nothing in this subdivision creates a duty of care or basis of
20 liability for personal injury or for damage to personal property.

21 (d) Nothing in this section shall limit the liability of an
22 independent concessionaire, or any person or organization other
23 than the public entity, whether or not the person or organization
24 has a contractual relationship with the public entity to use the
25 public property, for injuries or damages suffered in any case as a
26 result of the operation of a hazardous recreational activity on
27 public property by the concessionaire, person, or organization.

28 SEC. 2. Section 115800 of the Health and Safety Code, as
29 amended by Section 1 of Chapter 409 of the Statutes of 2002, is
30 amended to read:

31 115800. (a) No operator of a skateboard park shall permit
32 any person to ride a skateboard therein, unless that person is
33 wearing a helmet, elbow pads, and knee pads.

34 (b) With respect to any facility, owned or operated by a local
35 public agency, that is designed and maintained for the purpose of
36 recreational skateboard use, and that is not supervised on a
37 regular basis, the requirements of subdivision (a) may be
38 satisfied by compliance with the following:

1 (1) Adoption by the local public agency of an ordinance
2 requiring any person riding a skateboard at the facility to wear a
3 helmet, elbow pads, and knee pads.

4 (2) The posting of signs at the facility affording reasonable
5 notice that any person riding a skateboard in the facility must
6 wear a helmet, elbow pads, and knee pads, and that any person
7 failing to do so will be subject to citation under the ordinance
8 required by paragraph (1).

9 (c) “Local public agency” for purposes of this section
10 includes, but is not limited to, a city, county, or city and county.

11 (d) (1) Skateboarding at any facility or park owned or
12 operated by a public entity as a public skateboard park, as
13 provided in paragraph (3), shall be deemed a hazardous
14 recreational activity within the meaning of Section 831.7 of the
15 Government Code if all of the following conditions are met:

16 (A) The person skateboarding is 10 years of age or older.

17 (B) The skateboarding activity that caused the injury was
18 stunt, trick, or luge skateboarding.

19 (C) The skateboard park is on public property that complies
20 with subdivision (a) or (b).

21 (2) In addition to the provisions of subdivision (c) of Section
22 831.7 of the Government Code, nothing in this section is
23 intended to limit the liability of a public entity with respect to
24 any other duty imposed pursuant to existing law, including the
25 duty to protect against dangerous conditions of public property
26 pursuant to Chapter 2 (commencing with Section 830) of Part 2
27 of Division 3.6 of Title 1 of the Government Code. However,
28 nothing in this section is intended to abrogate or limit any other
29 legal rights, defenses, or immunities that may otherwise be
30 available at law.

31 (3) For public skateboard parks that were constructed on or
32 before January 1, 1998, this subdivision shall apply to hazardous
33 recreational activity injuries incurred on or after January 1, 1998,
34 and before January 1, 2001. For public skateboard parks that are
35 constructed after January 1, 1998, this subdivision shall apply to
36 hazardous recreational activity injuries incurred on or after
37 January 1, 1998, and before January 1, 2008. For purposes of this
38 subdivision, any skateboard facility that is a movable facility
39 shall be deemed constructed on the first date it is initially made
40 available for use at any location by the local public agency.

1 (4) The appropriate local public agency shall maintain a
2 record of all known or reported injuries incurred by a
3 skateboarder in a public skateboard park or facility. The local
4 public agency shall also maintain a record of all claims, paid and
5 not paid, including any lawsuits and their results, arising from
6 those incidents that were filed against the public agency.
7 Beginning in 1999, copies of these records shall be filed
8 annually, no later than January 30 each year, with the Judicial
9 Council, which shall submit a report to the Legislature on or
10 before March 31, 2007, on the incidences of injuries incurred,
11 claims asserted, and the results of any lawsuit filed, by persons
12 injured while skateboarding in public skateboard parks or
13 facilities.

14 (5) This subdivision shall not apply on or after January 1,
15 2001, to public skateboard parks that were constructed on or
16 before January 1, 1998, but shall continue to apply to public
17 skateboard parks that are constructed after January 1, 1998.

18 (e) This section shall remain in effect until January 1, 2008,
19 and as of that date is repealed, unless a later enacted statute,
20 enacted before January 1, 2008, deletes or extends that date.

21 SEC. 3. If the Commission on State Mandates determines that
22 this act contains costs mandated by the state, reimbursement to
23 local agencies and school districts for those costs shall be made
24 pursuant to Part 7 (commencing with Section 17500) of Division
25 4 of Title 2 of the Government Code.